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IMPLEMENTATION OF COMMISSION ON HUMAN RIGHTS DECISION 1996/103 ENTITLED "EFFECTS OF STRUCTURAL ADJUSTMENT POLICIES ON THE FULL ENJOYMENT OF HUMAN RIGHTS"

Compilation of comments on the preliminary set of basic policy guidelines

Note by the Secretariat

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Introduction

1. At its forty-third session in 1991 and at its forty-fourth session in 1992, the Sub-Commission on Prevention of Discrimination and Protection of Minorities endorsed the preliminary recommendations contained in paragraphs 229-236 of the second progress report of the Special Rapporteur on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1991/17) and the recommendations contained in paragraphs 202 and 246 of his final report (E/CN.4/Sub.2/1992/16), and requested the Secretary General to prepare basic policy guidelines on structural adjustment and economic, social and cultural rights, which could serve as a basis for a continued dialogue between human rights bodies and the international financial institutions (resolutions 1991/27 and 1992/29).

2. In its resolution 1992/29, the Sub-Commission, concerned at the negative effects of structural adjustment programmes upon the realization of economic, social and cultural rights, urged the international financial institutions, in particular the World Bank and the International Monetary Fund, to take greater account of the adverse impact of their policies and programmes of structural adjustment on the realization of economic, social and cultural rights, and to continue, on an ongoing basis, their full participation in the work and debates of the human rights bodies of the United Nations and to take into account the recommendations contained in paragraphs 231 to 243 of the final report of the Special Rapporteur.

3. At its forty-fifth session in 1993, the Sub-Commission, in resolution 1993/36, strongly encouraged all Governments to pursue effective policies and legislation aimed at creating conditions for ensuring the full realization of the right to adequate housing of the entire population and to take into account the particularly negative impact on housing and living conditions that might result from the adoption of economic adjustment and other policies based exclusively upon the dictates of the free market.

4. The Commission on Human Rights, in its resolution 1993/14, requested the Secretary-General to prepare basic policy guidelines on structural adjustment and economic, social and cultural rights, which could serve as a basis for a continued dialogue between human rights bodies and the international financial institutions.

5. At its forty-sixth session in 1994, in its resolution 1994/37, the Sub-Commission requested the Secretary-General to complete the preparation of basic policy guidelines on structural adjustment and economic, social and cultural rights, based on the principles of international human rights law.

6. In accordance with that request, the Secretary-General submitted to the Sub-Commission, at its forty-seventh session, a report containing a preliminary set of basic policy guidelines on structural adjustment programmes and economic, social and cultural rights (E/CN.4/Sub.2/1995/10).

7. At the same session, the Sub-Commission, in its resolution 1995/32, endorsed the above-mentioned report of the Secretary-General and requested the

Commission on Human Rights to authorize an open-ended working group of the Commission to meet for a period of one week prior to its fifty-third session to elaborate, on the basis of the preliminary set of basic policy guidelines on structural adjustment programmes and economic, social and cultural rights contained in the report of the Secretary-General (E/CN.4/Sub.2/1995/10, chap. II) and in close cooperation with the Committee on Economic, Social and Cultural Rights, policy guidelines on the subject-matter. The Sub-Commission also invited the Commission on Human Rights to request the Secretary-General to invite Governments and intergovernmental and non-governmental organizations, as well as the Committee on Economic, Social and Cultural Rights, to contribute to the elaboration of draft policy guidelines by providing their comments on the preliminary set of basic policy guidelines, for consideration by the working group.

8. In the same resolution, the Sub-Commission recommended a draft decision to the Commission on Human Rights for adoption.

9. Subsequently, at its fifty-second session, the Commission on Human Rights, in its decision 1996/103, decided to establish an open-ended working group of the Commission to meet for a period of one week prior to its fifty-third session to elaborate, on the basis of the preliminary set of basic policy guidelines on structural adjustment programmes and economic, social and cultural rights contained in document E/CN.4/Sub.2/1995/10 and in close cooperation with the Committee on Economic, Social and Cultural Rights, policy guidelines on the subject-matter.

10. In the same decision, the Commission also decided to invite Governments and intergovernmental organizations and non-governmental organizations, as well as the Committee on Economic, Social and Cultural Rights, to contribute to the elaboration of draft policy guidelines by providing their comments on the preliminary set of basic policy guidelines for consideration by the working group.

11. The Economic and Social Council approved that decision in its decision 1996/289.

12. Accordingly, in a circular note and letter dated 30 September 1996, the High Commissioner for Human Rights invited Governments, intergovernmental and non-governmental organizations as well as the Committee on Economic, Social and Cultural Rights to contribute to the elaboration of draft policy guidelines by providing their comments on the preliminary set of basic policy guidelines for consideration by the working group.

13. As at 23 January 1997, replies were received from Governments, intergovernmental organizations and non-governmental organizations as follows:

(a) Governments: Croatia and United States of America;

(b) Intergovernmental organizations: Food and Agriculture Organization of the United Nations (FAO); International Monetary Fund (IMF); United Nations Industrial Development Organization (UNIDO);

(c) Non-governmental organization: American Association of Jurists (AAJ).

A reply was also received from the Committee on Economic, Social and Cultural Rights.

14. The present report contains the replies received in compliance with the request contained in Commission on Human Rights decision 1996/103. The enclosures referred to in the replies received from the FAO, IMF and UNIDO are available at the Secretariat for consultation. Any additional replies will be compiled and submitted in addenda to this report.

I. REPLIES RECEIVED FROM GOVERNMENTS

CROATIA

[Original: English]
[19 November 1996]

1. The Republic of Croatia is of the opinion that the proposed text of basic policy guidelines represents a well-structured compilation of relevant legally binding and non-binding standards relating to the issue of the impact of structural adjustment programmes on the enjoyment of economic, social and cultural rights. Nevertheless, the Republic of Croatia is of the opinion that the document as a whole contains some overlapping of certain issues, particularly with respect to the extensive enumeration of principles underlining the guidelines (paras. 39-72) and the operative parts. Therefore, a shortening of the list of relevant provisions by careful choice is needed in order to achieve a more operative document, without prejudice to further inclusion of standards elaborated in the international instruments.

2. With regard to some particular issues raised in the preliminary set of basic policy guidelines, the Republic of Croatia supports the further elaboration of standards related to foreign debt (chap. II.C.3), particularly with a view to possible reprogramming of foreign debt for heavily indebted developing countries in order to ease the impact of such debt on the enjoyment of economic, social and cultural rights.

3. Furthermore, in respect of the question of the role of the international organizations as elaborated in the preliminary set of guidelines (chap. II.C), the Republic of Croatia supports the inclusion of standards relating to the granting and use of so-called Public Structural Adjustment Loans (PSAL) by the World Bank, in order to ensure the better respect and enjoyment of economic, social and cultural rights in debtor countries.

UNITED STATES OF AMERICA

[Original: English]
[13 January 1997]

SECTION I. SUMMARY OF MAIN HUMAN RIGHTS ISSUES (paras. 10-37)

1. The United States cannot accept the report's insistence that economic problems in the developing world are due entirely to the failure of developed countries and international financial institutions (IFIs) to provide resources unconditionally, their failure to forgive more debt and their alleged failure to take into account the social effects of structural adjustment programmes. The report also asserts erroneously that conditionality of lending programmes undermines national sovereignty and has a damaging effect on a nation's ability to meet its human rights obligations.

2. The report also argues that market reforms, such as privatization and liberalization of trade, have deleterious effects on human rights. This generalization is inaccurate. The United States Government recognizes that temporary hardship, such as higher unemployment, may occur in some cases. But the true issue here is how, not if, to implement the reforms necessary to achieve a healthy market economy. The market remains the only foundation for economic growth in the context of sustainable development. This is not to say that the international economic system based on market principles is perfect. Developed and developing countries, as well as IFIs, must continue to seek to ensure that all countries can take advantage of global economic opportunity while respecting human rights and protecting the most vulnerable.

3. The report goes on to blame structural adjustment for environmental problems through its alleged encouragement of over-exploitation of resources. This argument is at odds with another common, but equally unfounded, assertion that protection of the environment stunts the prospects of economic growth.

4. We would also suggest that structural adjustment programmes are not externally imposed. No Government is ever forced to accept the highly concessional money offered by IFIs. The IFIs have adopted many reforms aimed at integrating social and environmental protection and poverty alleviation into programmes. Non-market approaches to development have never succeeded; their failure only underscores the deficient human rights records of many countries with centrally planned economies. Elsewhere in the United Nations system, a more realistic approach recognizing developments of the past few decades has been adopted. This report should do likewise.

SECTION II. PRELIMINARY BASIC POLICY GUIDELINES*

A. Principles (paras. 39-72)

5. This section rightly recognizes that each State bears primary responsibility for its own development. It recognizes the need to incorporate

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* This does not attempt a paragraph-by-paragraph critique, but aims to point out the generally acceptable elements and the unacceptable elements.

a broad set of social, environmental and human rights concerns into economic policy-making. Paragraph 57 suggests, contrary to widespread evidence, that market forces impede development of human potential. In fact, the market remains the best starting point for the goal of maximum attainment of human potential. While corrections are sometimes required due to market failures, the market has proven superior to other mechanisms devised.

6. The United States Government supports paragraph 62, which states that structural adjustment programmes should contribute to economic growth and, at the same time, to fulfilling the aim of improving the human condition.

7. Paragraphs 66-71 attack the principle of conditioned assistance. The United States Government cannot agree to these statements calling for assistance to be unconditional. The sad legacy of misuse of development assistance requires that resources must follow reform, not precede it. It is wasteful to give money to any Government not firmly committed to good governance, to fiscal responsibility, and to transparency of decision-making. Lack of conditionality does nothing to promote realization of either human rights or economic development.

B. Policy guidelines for action at the national level

1. Popular participation (paras. 76-91)

8. The United States Government applauds this section's general support for increased transparency and participation, both within countries and the IFIs.

9. The United States Government strongly supports the call in paragraph 78 for States to safeguard basic workers' rights. This is consistent with commitment 3 (i) of the Copenhagen Declaration. We would note, however, that the following rights must be added to the list of basic workers' rights to make it fully consistent with the commitment agreed to in Copenhagen, namely: "the prohibition of forced and child labour and the principle of non-discrimination". In addition, the phrase "and to achieve truly sustained economic growth and sustainable development" should be deleted from the end of this paragraph.

10. The strict application of paragraph 80 would lead to economic stagnation by protecting workers from dismissal as a result of investment based on technical change. The United States Government believes that as a country develops, its production structure will change, and labour must adapt. What would be preferable here is a call for measures to help workers adapt to changing market conditions.

11. Paragraph 91 is generally acceptable to the United States Government. The last clause, however, which calls for the unilateral ability to change agreements at any time, is of doubtful legality. It is at best unwise, and must be deleted.

2. Equality of opportunity and access to productive resources (paras. 92-129)

12. This section's goals are laudable, on balance, but its calls for a mixture of strict economic regulations, social protection programmes and central planning are inconsistent with the concept of a free market, and counter-productive, in the United States Government's view. Paragraph 126 calls for broad use of subsidies, which the United States Government cannot support. Instead, the United States Government holds that subsidies must be tightly targeted toward only the most vulnerable people, who may require assistance in adapting to economic reform and adjustment. Subsidies should not be used to prop up non-competitive industries or sectors of the economy.

13. Paragraph 95 calls on States to ensure equality of opportunity for all in their access to, inter alia, "the fair distribution of income". It is unacceptably vague, however, on what standards should be used to determine the fairness of that distribution, or on how this will be implemented, and its wording should be clarified, in the United States Government's view.

14. Paragraph 97, which implies the need to replace sensible systems of progressive taxation with less progressive methods, contradicts the more sensible paragraph 98, which urges States to take action to address the underlying structural causes of poverty.

15. Paragraph 110 would be measurably improved by additional language, beginning after "child labour", as follows: "freedom of association and the right to organize and bargain collectively," then continuing with "equal remuneration". The United States Government also understands the intention of the inclusion of "equal remuneration for men and women of equal value" to be to promote pay equity between men and women, and accepts the recommendation on that basis. The United States implements it by observing the principle of "equal pay for equal work".

16. Paragraphs 113-115, dealing with food security, are unacceptable as drafted, in the United States Government's view, and should instead incorporate the agreed conclusions from the recent World Food Summit. Paragraph 114 improperly places blame on international trade for worldwide problems related to food, while the phrase "democratic agrarian reform" seems to be a euphemism for "non-market".

3. Equality of opportunity and access to social services (paras. 130-158)

17. Again, the United States Government rejects the attempts in this section to institute counter-productive measures, such as the mandatory surrender of hard currency. The United States Government calls, instead, for increased domestic and foreign investment through the adoption of policies promoting a stable market environment, one free from threat of confiscation or nationalization.

18. Paragraph 145 calls for workers who lose their jobs as a result of structural or technical changes to be re-trained while receiving full wages and then offered full work. In the United States Government's view, this is

not realistic, and the paragraph should be qualified by the addition of the following opening clause: "Whenever possible," before "workers who lose their jobs."

19. Paragraph 151 calls for free health care for all, which the United States Government does not favour. This is an expensive and unrealistic solution to the problems of health service provision. Governments should target assistance to the poorest and most vulnerable citizens.

C. Policy guidelines for action at the international level

1. Conditionality (paras. 159-185)

20. In the United States Government's view, it is any donor country's sovereign right, as well as its obligation to its taxpayers, to spend its foreign aid resources in the manner it deems most consistent with its sovereign interests. Recipients are under no obligation to take the assistance, nor are donors obliged to offer it. This section should be redrafted to reflect a real sense of the reciprocal nature of international economic and political relations. Policies which promote trade and investment (and thus, economic development) cannot flow naturally from any system which inflicts absolute and arbitrary control over all economic interests in the country.

21. Paragraph 164 asserts that there is an inalienable right to nationalize and expropriate property. International rules exist; to disregard them is to infringe on the sovereignty of others and to ensure that no investment resources ever flow into a country which does not observe these rules.

22. Paragraph 165 should be redrafted to include references to transborder issues, or actions which negatively affect neighbours and infringe on their sovereignty. The United States Government believes that transborder issues must be dealt with equitably.

23. Paragraph 169, which calls for unconditional assistance and terms of trade for developing countries, is unrealistic and should be deleted, in the United States Government's view.

24. Paragraph 171 again raises the issue of conditionality in an unacceptable fashion. The United States Government holds that there is no inherent right to foreign aid.

25. Paragraph 178 asserts that every State has the right to engage in international trade, despite differences in political, economic or social systems. The United States Government holds that potential trading partners have every right to refuse to engage in trade with a country on the basis of objections to differences which create unfair conditions for trade or which contravene internationally accepted human rights (core labour standards, for example).

26. Paragraph 185 would "untie" IFI assistance from policy measures. The United States Government holds that except in humanitarian emergencies, assistance should, in fact, be tied to policy measures, including respect for human rights.

2. Availability of external resources (para. 186-188)

27. This section should be recast to reflect the need for developing countries to reform their own economies with the understanding that resource flows will change from the implementation of sound economic policies, not by fiat.

3. Foreign debt (paras. 189-198)

28. This section must be recast and updated to reflect the needs of highly indebted poor countries (or HIPC), using language from the development committee communiqué at the World Bank/IMF meetings of late September. Both creditor nations and the IFIs have formulated new programmes to address both bilateral and multilateral debt of those countries in this category with a track record of real reform.

29. Paragraph 192 suggests that debt service need not be a high priority for a developing country. While the suspension of debt service may give short-term breathing room to a country, the medium- to long-term consequences of debt suspension are extremely damaging. No country should expect to receive either assistance or the private investment necessary to achieve a path to sustainable development, once it acts to suspend debt service.

30. Paragraph 198: Partnership and involvement of debtor countries in addressing debt issues must be encouraged. However, a key element of the partnership is that debtor countries must commit to sound economic policy, to good governance, and to meeting financial obligations. Furthermore, the United States Government believes that the United Nations system is simply not the appropriate place to set debt policy.

4. Extrnal trade (paras. 199-203)

31. The United States Government believes that this section's calls for artificial setting up prices (para. 201) and the creation of cartels (para. 202) are harmful notions, which must be discarded. The section's other concepts, including market access and the expressed concern for ensuring that developing countries are not left behind as global trade is liberalized, are acceptable and should be retained.

5. Transnational corporations (paras. 204-208)

32. This section should be redrafted to reflect a better theoretical grounding and a clearer, accurate sense of the history of attempts to develop a code of conduct.

6. Development assistance (paras. 209-220)

33. In the United States Government's view, paragraph 219 makes an unrealistic call for increased official development assistance (ODA), although it agrees to "strive to attain" a target of 0.7 per cent of GNP, which is consistent with previous language. A useful addition here would be new language calling for assistance in implementing national programmes that strengthen the private sector and increase the attractiveness of the investment climate. A vibrant, non-corrupt private sector is the best hope for helping eliminate the need for ODA in developing countries, in the United States Government's view.

7. Adjustment in developed countries (paras. 221-227)

34. In the United States Government's view, paragraph 221 fails to acknowledge the many multilateral efforts to create level playing fields for trade and investment.

8. Military expenditures (para. 228)

35. The United States Government encourages continued control of military expenditures. But this section's expressed goal of "general and complete disarmament" is utopian and unattainable, in the United States Government's view. This section needs to include recognition of the legitimate need to maintain armed forces for lawful purposes.

9. International institutions (paras. 229-252)

36. In the United States Government's view, paragraph 242 makes an unecessary call for "urgent and effective" reviews of lending policies by IFIs; the paragraph should be deleted. This is a throwback to the outdated programme for action of the new international economic order. In fact, the IFIs are continuing their ongoing reviews of policies and practices.

37. Paragraph 236 should be amended by adding after "enjoyment of human rights," the following phrase: "including internationally recognized workers' rights", then continuing with "and on social".

38. Paragraph 246 should also be discarded, in the view of the United States Government. Unacceptable assertions here include the need for non-market controls over exchange rates and "one country/one vote" practices in IFIs. In the United States Government's view, votes must be based on relative financial contributions as an essential component of good governance procedures in any financial institution.

39. Paragraph 247, on a broad basis, raises charter issues for the World Bank. However, in practice the World Bank already incorporates (indirectly, at least) some human rights issues into its decision-making, since these issues can clearly influence the financial viability of a specific project. The second sentence should be amended as follows: "In the context of its mandate, the World Bank should be encouraged to be sensitive to the pronouncements of the human rights bodies of the United Nations."

II. REPLIES RECEIVED FROM INTERGOVERNMENTAL ORGANIZATIONS

Food and Agriculture Organization of the United Nations

[Original: English]
[13 December 1996]

1. The Food and Agriculture Organization of the United Nations (FAO) has carefully studied the preliminary set of basic policy guidelines on structural adjustment programmes and economic, social and cultural rights contained in the aforementioned report.

2. First, however, we would like to draw attention to the Rome Declaration on World Food Security and World Food Summit Plan of Action, adopted by the World Food Summit, which was held in Rome from 13 to 17 November 1996. Throughout, the Declaration and Plan of Action stress the need for sustainable development and the fulfilment of the right to food. The Declaration furthermore states in paragraph 7:

> "Food should not be used as an instrument for political and economic pressure. We reaffirm the importance of international cooperation and solidarity as well as the necessity of refraining from unilateral measures not in accordance with the international law and the Charter of the United Nations and that endanger food security."

3. As a general comment, FAO notes that the analysis of the main components of "orthodox adjustment" strategies is somewhat critical of the efficacy and equity of structural adjustment programmes as promoted by the World Bank and the International Monetary Fund. It also highlights the negative impacts of these programmes on human rights, both within and between countries. The negative impact of structural adjustment programmes on the poor, on women and children is emphasized. On the other hand, it is argued that "... 'the adjustment process can, if carried out carefully and with the proper foundations, create economic conditions whereby growth and the protection of vulnerable and disadvantaged groups are promoted' ... In fact, adjustment can be utilized as an opportunity for redressing social imbalances and reviving emphasis on economic, social and cultural rights'" (para. 31 of the guidelines).

4. However, FAO fears that the draft policy guidelines may prove to be somehwhat overly ambitious and in many respects not likely to be accepted either in theory or in practice by many Governments or international financing institutions. Although in principle it is easy to agree that structural adjustment policies should not adversely affect the enjoyment of economic, social and cultural rights of the poor, FAO feels that a more restricted, focused and balanced approach might be more effective, namely a considered, minimum set of basic human rights standards in relation to such policies. Moreover, rather than assuming that structural adjustment will always negatively affect economic, social and cultural rights, a comparison between the effects of applying a structural adjustment programme and not applying it could be undertaken, to assess both positive and negative aspects. Such a comparison should be made for the short-, medium- and long-term impacts (cf. para. 55).

5. The principles are very numerous, and therefore not easily digestible. There also seem to be repetitions of the same principles in different contexts. For instance, the right of workers is repeated four times (paras. 78, 81, 108, 111); the plea for investment in human resources four times (paras. 130, 133, 136, 140); anti-poverty measures and social protection seven times (paras. 134, 142, 143, 144, 150, 157, 158); and access to social services ten times (paras. 146-149 and 151-156). With an improved categorization of the socio-economic issues linked to structural adjustment, these drafting problems may be overcome. Further, in order to achieve more focused policy guidelines, they could be strictly limited to structural adjustment policies, leaving out other more remotely related issues, such as that food should not be used for political pressure (para. 180), which the FAO feels is in many ways a different question. Lastly, some prioritization of the principles would be helpful.

6. On a more specific issue, FAO feels that in the set of principles (see para. 51) the right to food and food security could be stated more explicitly. A reference to the World Food Summit, or the right to adequate food and the fundamental right to be free from hunger, would be welcome in this regard. A principle relating to sustainable management of natural resources could also be added in that section, followed by appropriate guidelines in sections B and C on the conservation of natural resources and sustainability.

7. FAO further notes that the term "food" in paragraph 180 is rather ambiguous. It is not clear whether it refers to food aid in kind, economic aid which could be used for the purchase of food, trading privileges which help countries to earn revenues that could be used to purchase food, provision of assistance to build up the economy and ensure long-term food security, or sanctions that include measures that diminish the capacity to purchase food. Furthermore, the question arises whether indeed there is a general principle here governing all international assistance and economic relations between countries that need to be addressed, including questions of medical supplies and services, clothing, education, etc., as well as food.

8. In section B of Part II (Policy guidelines for action at the national level), some 16 paragraphs relate to the work of FAO (paras. 77, 82-84, 98, 103, 106, 112-115, 117, 119-120, 122, 126). The content of those paragraphs is in harmony with the objectives, policies, strategies and programmes of FAO as approved by its Governing Bodies and embodied in its Programme of Work and Budget. However, one aspect missing from the list regards the rights of farmers with respect to plant and animal genetic resources.

9. In paragraph 213 on research and technology transfer, FAO would like to suggest the following rephrasing:

> "States, primarily highly industrialized countries, should promote the adaptation and as appropriate the dissemination and transfer of food production technologies that are relevant to developing countries, and, to that end, they should, inter alia, make all efforts to strengthen the capacities of the scientific institutions and scientists in the developing countries not only to harness the benefits of modern

scientific advances but also to effectively integrate new science with indigenous knowledge in sustainable agricultural development programmes."

10. Finally, regarding paragraph 185, FAO would like to point out that it is the sovereign right of each country to decide whether to accept or reject assistance from international financial institutions which insist on certain basic conditions for the approval of credit. The prospective creditor or donor, whether it is a State or a multilateral organization, has a right to be satisfied that the funds are being used properly and effectively, whereas the recipient has a right to accept the loan or assistance with the conditions, or not to accept it at all.

International Monetary Fund

[Original: English]
[14 November 1996]

1. It may be useful to recall that the Fund's policies in providing financial and other forms of support for a country's policy programme are established by the Fund's Executive Board, in which virtually every member is represented. Those policies are determined by the Fund's Articles of Agreement, and in broad terms confines the Fund to microeconomic and financial matters at the national and international levels. The Fund's policies are reviewed regularly and adopted to country experiences and changes in the global economic setting. Of course, suggestions on how those policies could perhaps take better account of countries' undertakings associated with the International Covenant on Economic, Social and Cultural Rights are most welcome.

2. Document E/CN.4/Sub.2/1995/10 provides a very helpful summary of the views and recommendations presented by the Special Rapporteur on the realization of economic, social and cultural rights, Mr. Danilo Türk. It will be recalled that on several occasions various Fund staff members met with the Special Rapporteur, to exchange views, and to provide information and answer questions on the Fund's policies and practices. Moreover, a Fund staff representative made statements on related matters to the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the World Conference on Human Rights and the Fourth World Conference on Women. The Managing Director addressed the World Summit for Social Developments. For the Social Summit, the Fund staff prepared a pamphlet entitled "Social Dimensions of the IMF's Policy Dialogue" (enclosed) which may be of use to the working group.

3. A substantial part of E/CN.4/Sub.2/1995/10 is devoted to a listing of prescriptions extracted from many sources. Some of the prescriptions were formulated as long as 30 years ago, when the global economic and financial setting was considerably different than the present one. One task that the working group may wish to undertake is to sift them for current relevance. In the base document there is frequent reference to the external debt situation of developing countries. Attention is drawn to the debt initiative for heavily indebted poor countries, an initiative developed by the Managing Director of the IMF and the President of the World Bank (enclosed). That

initiative was endorsed by the ministerial oversight bodies - the Interim Committee of the Fund and the joint Bank/Fund Development Committees - at their respective meetings in Washington in September 1996. Both committees encouraged the Fund and the Bank to move forward urgently to the implementation phase.

4. Lastly, there is a view held in certain circles that Fund- and Bank-supported adjustment programmes have made the economic and financial situations worse in countries, and thus by implication have rendered more difficult the full enjoyment of human rights. To counter the former view, a copy of a recent study examining the impact of structural adjustment in African countries is enclosed, along with a set of fact sheets on various aspects of Fund activities that was distributed during the Fund's and Bank's Joint Annual Meeting held in Washington in October 1996.

5. The Fund is available to respond to requests for clarification and additional information, and, if thought appropriate, to meet with the working group.

United Nations Industrial Development Organization

[Original: English]
[13 November 1996]

1. While, in general, UNIDO supports structural adjustment programmes, it maintains that they should not unnecessarily hurt disadvantaged groups in the society. Thus, they should be implemented, inter alia, in conjunction with an explicit strategy for the industrial sector and an industrial policy focusing on building up a basis for development that can create income and employment and other resources, in an ecologically sustainable manner.

2. In this regard, UNIDO has formulated and implemented several programmes in developing countries and economies in transition, particularly addressing competitiveness and privatization issues, regional integration, rural industrialization, enhancement of the role of women in industry, support to small- and medium-scale industry, investment promotion and human resources development.

3. These various programmes are described, in some detail, in the Annual Report of UNIDO 1995, which is enclosed.

III. REPLY RECEIVED FROM THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

[Original: English]
[23 January 1997]

1. The Committee on Economic, Social and Cultural Rights notes that the Commission on Human Rights has decided to establish an open-ended working group to elaborate a "set of basic policy guidelines on structural adjustment programmes and economic, social and cultural rights". The working group was invited to do so in close collaboration with the Committee. The Commission also decided to invite various bodies, including the Committee,

to provide comments on the preliminary set of basic policy guidelines compiled by the Secretary-General. The Commission's invitation to provide comments was considered by the Committee at its fifteenth session in November/December 1996. On the basis of the comments made by various members, the following comments are submitted on behalf of the Committee.

2. The Committee considers that the potential impact of structural adjustment programmes on the enjoyment of the rights recognized in the International Covenant on Economic, Social and Cultural Rights is immense. In many instances, Governments and other sources providing information to the Committee have indicated that the actual impact has been extremely adverse. Such information led the Committee to adopt the following statement in paragraph 9 of its General Comment No. 2 (1990):

> "The Committee recognizes that adjustment programmes will often be unavoidable and that these will frequently involve a major element of austerity. Under such circumstances, however, endeavours to protect the most basic economic, social and cultural rights become more, rather than less, urgent. States parties to the Covenant, as well as the relevant United Nations agencies, should thus make a particular effort to ensure that such protection is, to the maximum extent possible, built in to programmes and policies designed to promote adjustment. Such an approach, which is sometimes referred to as 'adjustment with a human face' or as promoting 'the human dimension of development', requires that the goal of protecting the rights of the poor and vulnerable should become a basic objective of economic adjustment. Similarly, international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, inter alia, international cooperation. In many situations, this might point to the need for major debt relief initiatives."

3. Since its adoption of this statement the Committee has not received information which would lead it to believe that there has been any marked improvement in the extent to which adjustment policieies have been modified in order to promote respect for economic, social and cultural rights. The Committee notes that the responsibility in this regard falls upon a variety of actors and that it is usually neither appropriate nor productive to suggest that any one actor bears all the responsibility for the situation that has developed in many countries. The actors involved in shaping structural adjustment policies include the Government of the State concerned, third party Governments in their capacities as debtors, aid donors or otherwise interested parties, and international organizations. The social partners, including the labour and business sectors, both domestic and transnational, will also play an important role in many situations.

4. In relation to the report of the Secretary-General, the Committee wishes to make several observations. It notes with appreciation the various reports submitted by Mr. Danilo Türk which have helped to shed considerable light on many of the important challenges that arise in relation to economic, social and cultural rights.

5. The Committee very much regrets that one of the major recommendations of that report has still not been implemented. It expressed its disappointment in the following terms in the report on its twelfth session, adopted in May 1995:

> "In 1992 [the final report of Mr. Türk] emphasized the importance of involving the World Bank and IMF in discussions in relation to the promotion of [economic, social and cultural] rights (E/CN.4/Sub.2/1992/16, para. 238). This proposal was taken up by the Sub-Commission in its resolution 1992/29 (para. 11 (c)). Subsequently, the Commission on Human Rights, in its resolution 1993/14 (para. 18), requested the Secretary-General 'to invite the international financial institutions to consider the possibility of organizing an expert seminar on the role of the financial institutions in the realization of economic, social and cultural rights'. At its ninth session, in 1993, the Committee on Economic, Social and Cultural Rights endorsed this proposal 'in very strong terms' and urged 'that every effort be made to organize such a seminar' (E/1994/23-E/C.12/1993/19, p. 78, para. 388).
>
> "Correspondence ensued between the Centre for Human Rights and the World Bank in which the latter expressed its willingness to assist in that endeavour. Since that time, despite the adoption of two further resolutions by the Commission (resolution 1994/20, para. 17, and resolution 1995/15, para. 17), nothing has eventuated.
>
> "The Committee deeply regrets the continuing and unacceptable delays involved and calls upon the United Nations High Commissioner for Human Rights and the Assistant Secretary-General for Human Rights to take immediate action to give effect to the repeated recommendations of the Commission. The Committee believes that it would be entirely appropriate for such a seminar to be held, on the basis of expert participation from the concerned bodies, and for subsequent consideration to be given to the holding of a public seminar" (E/1996/22-E/C.12/1995/18, paras. 345-347).

6. The Committee notes that while a meeting took place in July 1996 between the High Commissioner and the President of the World Bank no such meeting can be a substitute for the expert seminar. The Committee thus urges the Commission to renew its invitation to the Secretary-General in relation to the expert seminar with increased urgency.

7. In terms of the methodology which the working group might decide to follow, the Committee considers that the report of the Secretary-General does not provide an ideal foundation upon which to base the drafting of guidelines. The report is based on a Special Rapporteur's report which was prepared between 1988 and 1992. The international situation has changed very considerably since that time and the nature and extent of the policies affecting adjustment measures, both at the domestic and the international level, have undergone a significant transformation. In this sense the report does not provide a timely or up-to-date basis on which the working group can work.

8. Moreover, the report of the Secretary-General provides a compilation of statements, principles and rights which is so heterogeneous and undifferentiated that its risks confusing the fundamental principles which should guide structural adjustment with much more contentious assertions of political positions. In this way, the clearly defined legal obligations flowing from the various treaties accepted by States, most notably the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, are not accorded the pre-eminence they deserve.

9. The Committee considers that the report by the Secretary-General is so broad that it provides only a rather limited technical foundation upon which the work of the working group should be based. While it is both appropriate and necessary for the Commission on Human Rights to examine and keep under review the human rights dimensions of international economic policies, it can only do so if it is provided with the necessary expert advice which would enable it to adopt valid and potentially effective policy recommendations. In this regard the Committee recalls that, on the recommendation of the World Conference on Human Rights, the Commission on Human Rights recommended that "the Centre for Human Rights convene expert seminars for chairpersons of the human rights treaty monitoring bodies and representatives of specialized agencies and non-governmental organizations, as well as representatives of States, focused on specific economic, social and cultural rights, with a view to clarifying the particular content of these rights" (resolution 1994/20, para. 9). Despite this request, no such seminars have been held. Such seminars could have provided an appropriate and useful basis for the important discussions upon which the working group has now been asked to embark.

IV. REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

American Association of Jurists

[Original: Spanish]
[9 December 1996]

1. Although the governing elites of the third world and the highly industrialized countries share the blame, the main reason for the unjust international order that currently exists is the approach imposed by those who control the essence of the international economy, finance and technology, backed up by the leaders of the great powers and the international institutions under their sway, and especially the Bretton Woods institutions.

2. The reason for IMF's opposition to the reduction or annulment of the multilateral debt 1/ is that, in addition to being a means of pillaging the resources of third world debtor countries, it is the ultimate weapon for imposing on them a globalization of the economy controlled by large-scale transnational capital.

3. There is a clear trend towards institutionalizing this domination of international economic and social affairs, even within the United Nations system itself, with the aim of concentrating discussion and decisions on such matters in small closed conclaves in which the Bretton Woods institutions

participate but which exclude the international community of sovereign States, the social protagonists and responsible and objective experts, who are not, in other words, motivated by a neoliberal-oriented ideology.

4. In an International Labour Organization publication, Rahman Khan, Professor of Economics at the University of California, says:

> "For more than a decade now the developing countries have been told by the donors and the international development agencies that adjustment is unavoidable, that they cannot hope to resume growth and improve living conditions for their population without going through the painful process of adjustment. The presumption is that the imbalance has been due mainly to external factors beyond anybody's control and to the irrational policies of the developing countries.
>
> This is hardly a defensible position. Many of the above causes of imbalance [the author is referring to external trade accounts, the national budget and the imbalance caused by inflation] were due to the policies pursued by the OECD (Organization for Economic Cooperation and Development) countries. It was the domestic policies of these countries, especially of the United States, which were responsible for the unprecedented rise in the real rate of interest. The recession in these countries was also largely a result of government policies." 2/

5. Professor Khan asserts on the basis of statistics that the external imbalance of the developing countries during the 1980s was due not to a decline in the volume of their exports, but to a deterioration in the terms of trade with the OECD countries. This was one way in which they exported their crisis to the developing countries.

6. The international crisis can be attributed to a number of factors, including the far-reaching changes in the system of production as a result of technological innovations. The factor which has determined the economic and social decline has, however, been the imposition of neoliberal policies in order to make the developing countries and the peoples of the entire world carry the main burden of the crisis and thus preserve the benefits of the most developed countries and ensure that the profits of the privileged minorities remain untouched.

7. The greed and egoism of the big capital-holders is matched only by the economic and social short-sightedness of their advisers and experts.

8. The consequences of the neoliberal policies are plain for all to see; almost everywhere in the world the economic recession has tended to become generalized and long-lasting. Not only is there no decline in the high rates of unemployment but they persist and even increase, social inequalities become more pronounced and in this propitious breeding ground racist and authoritarian ideologies and practices, social marginalization, violence and major and petty crime pursue their implacable growth.

9. The economic and social situation in those countries which are typical examples of neoliberalism - the United States and the United Kingdom - is catastrophic. The United States is the most heavily indebted country in the

world, compounded by the fact that the entire world is required to contribute to its deficit; it is the unquestioned leader of the industrialized world where social inequalities are concerned; 3/ the 1980s in the United States saw a drop in the lowest real wages and an increase in the working day, unlike the 1960s when work time was reduced with no loss of wages. 4/

10. Also in the United States, the proportion of children below the poverty line (one fifth of the total) is the highest in the industrialized world and the crime rate, and juvenile and child crime in particular, is mounting rapidly. 5/

11. In the United Kingdom, the number of persons below the poverty line increased from 5 million in 1979 to 13.9 million in 1992. 6/

12. In Latin America and the Caribbean, the period of structural adjustment from 1980 to 1990 was a "lost decade" in social and economic terms; the GDP dropped, the number of poor people increased in absolute and relative figures and the external debt rocketed despite the astronomical sums paid out in debt repayment and interest. 7/ The situation has not improved in the present decade so far; it was estimated that, by the end of 1995, the Latin American public debt amounted to 600,000 million dollars; in other words, it had increased by 17 per cent since 1993 - growing much faster than gross domestic product. 8/

13. Towards the end of the "lost decade" in Latin America, which revealed the failure of the neoliberal approach, meetings were held in Washington in 1989 under the auspices of the World Bank and IMF, attended by representatives of the Treasury and State Departments of the United States, the finance ministers of the Group of Seven, the presidents of influential transnational banks and selected personalities from the Latin American political and economic scene. The meetings drew up guidelines and recommendations which later came to be known as the "Washington Consensus", reiterating the neoliberal approach in all fields (financial liberalization, privatization, opening of all frontiers to international trade, etc.). 9/

14. The "Washington Consensus" has been the platform for continued economic stagnation and social regression in the region.

15. The succession of optimistic forecasts by IMF, World Bank and OECD experts concerning economic recovery and the reabsorption of unemployment in various countries were first scaled down and subsequently systematically belied by the facts. 10/

16. Leaving aside assessments based on favourable short-term conjunctions of circumstances due to brief bursts of economic euphoria following speculation "bubbles" created with flight capital or originating in temporary increases in real demand, the economic and social balance worldwide is frankly negative.

17. In statements and documents, high-level IMF officials condone the extremely damaging social effects of the policies they impose on various countries and regions, as in the case of the sharp drop in real wages in

the CFA franc region following devaluation 11/ and in Mexico after the January 1995 crisis; Mr. Camdessus even went so far as publicly to express satisfaction at the sharp increase in unemployment in Mexico. 12/

18. The officials of the Bretton Woods institutions argue that the social costs of the neoliberal structural adjustment policies are temporary and that in the medium term these policies will lead to positive results in terms of economic development. World Bank economists have cited some south-east Asian countries and Japan as examples of the successful application of neoliberal policies. However, they are bound to admit that selective state interventionism, contrary to neoliberal doctrine, occurred in those countries. 13/

19. As three papers published in the UNCTAD Review 1994 point out, however, the economic policies of the nine industrialized countries of south-east Asia and Japan were completely different from the neoliberal approach recommended by the World Bank and IMF. The authors of the three papers criticize and refute the World Bank analyses; one of them, Sanjaya Lall, describes them as "tame and partisan. They reflect neither theory nor evidence" (p. 85).

20. The meeting convened by UNCTAD in Kuala Lumpur at end February/early March 1996 analysed the case of the east Asian countries and the lessons that could be learned from their experience. A number of working documents were published in connection with this meeting.

21. The fact is that the adjustment policies imposed by IMF have been an economic failure and have widened the gap between the rich and poor countries and between the rich and poor segments of the population within each country. Internationally, the number of poor people has increased and the living conditions of hundreds of millions of people have worsened.

22. Neoliberal doctrine advocates as the miracle cure on the one hand a free market without restrictions - the complete liberalization of trade and finance, privatization, etc. - while on the other hand it maintains the fundamental importance of restoring monetary balance and for that purpose encourages reduced spending - not spending in general but specific expenditures: (a) wage costs; (b) social costs (social security, health and education); (c) public spending in general - and also tax reforms involving increased consumer taxes and reduced taxes for the very wealthy.

23. These policies are encouraged in (and imposed on) many third world countries by IMF and the World Bank, but many of their features also apply in developed countries.

24. The theory lacks a proper scientific basis since it is founded on imaginary hypotheses, such as pure and perfect competition, and attributes to the currency magic powers for rectifying economic imbalances when the currency is (should be) only an instrument of the real economy.

25. In actual fact, the dominant IMF theories have changed in order to accommodate the current requirements of large-scale international capital, from pure monetarism during the stabilization policy period to neoliberalism and monetarism in the present period of structural adjustment policies; these

consist in adjusting economies to globalization directed by and benefiting large-scale capital while, as is characteristic in periods of crisis of relative over-production and reduced demand, it is unproductive and parasitic capital which profits in particular.

26. The methodological approach of the neoliberal credo is microeconomic, since it focuses on the economic arithmetic of the individual enterprise - the correlation between wages and costs on the one hand and prices on the other. However, economics used as a social science has to be basically macroeconomic - the general dynamic trend of production, supply and demand taken as a whole.

27. The present obsession with cutting wage and social costs is thus a partial and mistaken approach which does not take account of the general evolution of the economy.

28. Cost-benefit analysis in the enterprise is an essential tool for the rational management of its finances, but if it is not an integral part of the general economy, in a general social and economic rationale of economic growth, full employment and fair distribution of the product, it becomes irrational, self-destructive and socially damaging.

29. It is a fact that the economy can continue to function internationally with a high rate of unemployment and vast zones of poverty and exclusion without affecting the lives of the privileged classes, who seal themselves off in luxurious estates guarded by private police. 14/

30. But how long will the people continue to put up with the lies, the poverty, the exclusion and the oppression without rebelling?

31. Early in 1996, the Secretary-General of the United Nations announced that 2,500 million dollars would be earmarked for Africa over the next 10 years and that the World Bank would direct the operation. This announcement seemed intended to offend the peoples of Africa and try their patience, due to the laughably small sum (2,500 million dollars annually is slightly more than twice the annual turnover of Disneyland in France) and the fact that the World Bank, along with IMF, is one of the main perpetrators of economic and social genocide in Africa in recent decades.

32. As a first move towards terminating this unjust, dangerous and incendiary situation, we believe that measures such as the following need to be implemented:

(a) Audits to be made by an international team of independent experts in order to analyse the economic and financial situation of the external debt and the legitimacy of the operations which gave rise to it and of the various clauses in the original contracts (interest rates, amount of costs and commissions, etc.). The annulment of fictitious and/or illegal debts should be decided on the basis of these audits;

(b) Recognition that debtor States can invoke the rebus sic stantibus principle (fundamental change of circumstances rule) (the obligation is

extinguished and the debtor is released from it when its fulfilment is impossible, very onerous or essentially different from when the debt was contracted);

(c) Preclusion of the liability of the State as a debtor in cases where the beneficiaries of the credit were exclusively private persons;

(d) Substantial reduction of existing interest rates and of the costs and commissions paid in debt renegotiation;

(e) Account, to be taken, in addition to capital repayments, of excessive interest, costs and commissions already paid, so as to reduce or cancel the debt;

(f) Declaration of a general moratorium on the remaining debt;

(g) Annulment of the entire bilateral and multilateral debt of the least developed countries.

33. And in addition:

(a) Internationally:

(i) Introduction of reforms in the international monetary system, so as to stabilize exchange rates and discourage international financial speculation;

(ii) Heavy duties to be levied on speculative international financial transactions;

(iii) The policies of the World Bank and IMF to be brought into line with international human rights standards and the structures of the two institutions to be democratized and made subject to monitoring and guidance by the United Nations Economic and Social Council and the General Assembly;

(iv) Fair prices to be established in the international market for raw materials and manufactures from the developing countries and the markets of the wealthy countries to be opened up to these materials and products;

(b) Nationally:

(i) Establishment of a fiscal policy to redistribute income and heavy taxation of unproductive and speculative financial capital with the reduction of taxes on basic consumer goods;

(ii) Creation of fiscal and credit incentives for microenterprises and for small and medium-sized firms;

(iii) A move towards active and selective intervention by the State in implementing economic development and social investment policies;

(iv) Orientation of wage policy towards a fairer distribution of the national product and of social security policy towards full coverage of situations of unemployment, disability and illness, dependency allowances and old-age pensions. Compliance with international labour standards to be ensured;

(v) Shortening of the working day without cutting wages, particularly in the highly industrialized countries where new technologies and economic changes have reduced the need for human labour, because it is wealth and not poverty that must be redistributed;

(vi) Peasants to be given access to fertile land and irrigation water when they lack these resources. Peasant communities should manage and control agricultural credit and irrigation democratically;

(vii) Guarantee of democratic and transparent State management from which corruption has been eliminated. Establishment of means of ensuring broad popular participation in making and implementing decisions and in monitoring the results.

34. It is now time for serious discussion of the issue of the right to development with the participation of the specialized agencies of the United Nations system, such as UNCTAD, UNDP, WHO, FAO, ILO and UNRISD, States and the representatives of civil society, i.e. organizations of workers, peasants, professionals, entrepreneurs, women, indigenous peoples, etc., who will be the ultimate victims or beneficiaries of the strategies developed.

Notes

1/ Reply by IMF in E/CN.4/1995/25/Add.1, para. 27.

2/ Azizur Rahman Khan, Structural Adjustment and Income Distribution, Issues and Experience, Geneva, ILO, 1993, p. 4.

3/ Federal Reserve Studies, New York Times, 17 April 1995, Le Monde, 19 April 1995.

4/ Sam Rosenberg, "L'allongement du temps de travail aux Etats-Unis", in Futuribles, No. 165-166, Paris, May-June 1992.

5/ James P. Grant, former Director of UNICEF, press conference in Brussels on 21 June 1994.

6/ Survey by the Department of Social Security of the United Kingdom, Le Monde, 20 July 1994.

7/ Eric and Fernando Calcagno, El Universo Neoliberal, Alianza Editorial, Madrid-Buenos Aires, 1995, pp. 323 and 327; figures and projections prepared at the Segunda conferencia regional gubernamental de América Latina sobre la pobreza, Quito, Ecuador, 1990.

8/ Clarín (daily newspaper), Buenos Aires, 24 December 1995.

9/ Naúm Minsburg, "El enmarcamiento ideológico de la actual política argentina y el 'Consenso de Washington'", in: Argentina Hoy: Crisis del Modelo, Minsburg y Valle (coordinators), Ediciones Letra Buena, Buenos Aires, September 1995.

10/ UNCTAD, Trade and Development Report, 1995, Overview.

11/ Jean A.P. Clément, "Aftermath of the CFA Franc Devaluation", Finance and Development (quarterly publication by IMF and the World Bank), vol. 32, No. 2, June 1995.

12/ Bertrand La Grange, "La crise financière et économique a entraîné l'appauvrissement des mexicains", Le Monde, 5 July 1995.

13/ World Bank, The East Asian Miracle, Oxford University Press, New York, 1993, pp. 5, 6 and 325.

14/ Robert López, "Hautes murailles pour villes de riches", in: Le Monde Diplomatique, March 1996.